

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

JOHN ROBERT DEMOS,

Cause No. CV 10-15-BLG-RFC-CSO

Petitioner,

vs.

FINDINGS AND
RECOMMENDATION
OF U.S. MAGISTRATE JUDGE

THE UNITED STATES, et al.,

Respondents.

Once again, a matter comes before the Court on a petition for writ of habeas corpus filed by Petitioner Demos, a Washington state prisoner proceeding pro se. On this occasion, Demos invokes 28 U.S.C. § 1651.

Demos claims to be an immigration and military detainee. He is not. He is serving a prison sentence under a judgment imposed by a court of the State of Washington. The federal court in the District of Montana lacks jurisdiction to take any action with respect to Demos's custody.

Because Demos's petition is frivolous, it is not in the interest of justice to transfer his petition to the appropriate district in Washington.

The action should be dismissed.

Additionally, any appeal from the District Court's disposition would be taken in bad faith. For the same reason, a certificate of appealability is not warranted.

Based on the foregoing, the Court enters the following:

RECOMMENDATION

1. Demos's motion to proceed in forma pauperis (doc. 2) should be DENIED and the Petition (doc. 1) should be DISMISSED.
2. A certificate of appealability should be DENIED.
3. The District Court should CERTIFY that any appeal from its disposition would be taken in bad faith, pursuant to Fed. R. App. P. 24(a)(4)(B).
4. The District Court should direct the Clerk to enter a judgment of dismissal.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATION AND CONSEQUENCES OF FAILURE TO OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to this Findings and Recommendations within fourteen

(14) calendar days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge.

Petitioner must immediately file a “Notice of Change of Address” if his mailing address changes while this action remains pending in this Court. Failure to do so may result in dismissal of his case without notice to him.

DATED this 23rd day of February, 2010.

/s/ Carolyn S. Ostby

United States Magistrate Judge